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AUG 26 2004

In re Application of :
Oron, et al. :
Application No. 10/767,218 : ON PETITION
Filing Date: January 29, 2004 :
Docket No.: 009584-0307530 :

OFFICE OF PETITIONS

The above-identified application has been referred to the Office of Petitions for consideration of the "PETITION TO CORRECT FILING DATE," filed July 13, 2004. This petition is being treated under 37 CFR 1.10(c) as a petition to accord the above-identified application a filing date of January 28, 2004.

Petitioners allege that the application was deposited into USPS Express Mail service on January 28, 2004.

Paragraph (a) of 37 CFR 1.10 states that:

"(1) Any correspondence received by the U.S. Patent and Trademark Office (USPTO) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed with the USPTO on the date of deposit with the USPS.

(2) The date of deposit with USPS is shown by the "date in" on the "Express Mail" label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the USPTO receipt date as the filing date. See § 1.6(a)."

Paragraph (c) of 37 CFR 1.10 states that:

"Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Director to accord the correspondence a filing date as of the "date-in" on the "Express

Mail" mailing label or other official USPS notation, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
- (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit."

The instant petition lacks (2) and (3) set forth above.

As to item (2), petitioner has not provided the "Express Mail" label number in question thus it cannot be established that the "Express Mail" mailing label in question corresponds with the Certificate of Express Mailing contained in the application papers received by the Office.

As to item (3), while the petition references the submission of a copy of the "Express Mail" label in question, review of the official application file does not indicate receipt of the label.

Any renewed petition must establish the manner in which the application papers were submitted and must comply with the requirements of 37 CFR 1.10(c).

Any request for reconsideration of this decision must be filed within two (2) months of the mail date of the instant decision to be considered timely. See, 37 CFR 1.181(f). This time period may not be extended under 37 CFR 1.136.

The required petition fee of \$130.00 has been charged to deposit account No. 50-2213.

Further consideration with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (703) 872-9306

By hand: U.S. Patent and Trademark Office
220 20th Street S.
Customer Window
Crystal Plaza 2, Lobby, Room 1B03
Arlington, VA 22202

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0310. Telephone inquiries after September 27, 2004 should be directed to the undersigned at (571) 272-3205.



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Office of Petitions